U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 0 2 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a candidate for a master in business administration degree at , Baltimore, Maryland. While at , the petitioner has also served as research program coordinator for a study correlating HIV, drugs and heart disease. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits citation data and a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on May 8, 2012. In an accompanying letter, counsel offered a capsule discussion of *NYSDOT* and listed a number of unpublished AAO appellate decisions approving national interest waivers. Counsel did not provide any of the facts from the cited decisions except to identify the occupations of the respective beneficiaries. Counsel failed to explain how these unpublished decisions are relevant to the present proceeding. While the USCIS regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The decisions show that workers in a wide range of fields can qualify for the waiver, but they do not establish blanket waivers for aliens in those fields. At issue is not what the petitioner does, but the significance of what the petitioner has so far accomplished.

The petitioner submitted copies of two articles he co-wrote. One article, from the June 2012 issue of the showed the petitioner as the 12th of 13 authors. The second article, submitted in manuscript form, was marked as having been accepted for publication in The petitioner was listed seventh out of 12 authors of that paper. This material establishes the petitioner's participation in medical research, but it does not establish his impact or influence on his field, or otherwise distinguish the petitioner's work from that of other researchers in that field.

On August 11, 2012, the petitioner submitted additional materials, which counsel called a "Response to Request for Evidence," although the director issued no request for evidence (RFE) before August 11, 2012. The petitioner's August 2012 submission included additional documentation of his professional credentials, copies of his two published articles and his master's thesis, and several witness letters. Counsel asserted that these letters show that the petitioner meets the guidelines set forth in *NYSDOT*. Most of the witnesses are researchers, or have demonstrated ties to that institution. Counsel asserted that "some of the letters are from people outside [the petitioner's] circle of his acquaintances – who do not know him personally."

country medical officer in for the stated:

> I have never worked with [the petitioner], and I have never supervised him in any capacity directly. However, owing to his association with the and having worked in the I am confident to comment on his work, acumen and professional credentials for the successful management of health and public health projects targeted to improving the health of vulnerable populations.
>
> . . . I . . . comprehend from my professional networks that [the petitioner] contributed towards India's success to implement the in the whole nation in the capacity of a consultant for the program in state. . . .
>
> Like [the petitioner], I was one of those consultants for (1999-2004). Having worked in the highly challenging state of , he must certainly have endured and built his capacity to work in the most challenging environments. . . . This state, with a population of about 80 million, continues to do well after the initial consultancies of the consultants like [the petitioner] and I provided there.

Regarding the petitioner's current work, stated that the petitioner "is working towards the success of several NIH (National Institute of Health) sponsored projects to address the issues of cardio-vascular-disease (CVD) and drug abuse in American population infected with HIV/AIDS." Rather than discuss this project any further, turned to a discussion of tuberculosis, without any explanation as to how it relates to the petitioner's current work.

public health director for the City of and chair of policy development in the , stated:

> [The petitioner] has been instrumental and supported the efforts of APHA to achieve the goal of continuous advancement and continuous improvement of the health of residents of the United States. By virtue of his multiple advanced degrees . . . and rich experience of more than 10 years, he has an exclusive edge over others in his field, and his contribution has been outstanding and significant.

praised the petitioner's "past continuous contribution" but provided no details. The AAO notes that degrees and more than ten years of experience are both contributing factors toward a finding of exceptional ability. *See* 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (B). Exceptional ability is not, by itself, grounds for the waiver, and therefore evidence supporting a partial claim of exceptional ability does not inherently show eligibility for the waiver.

The remaining witnesses all have affiliations with of the , who teaches "several courses and seminars . . . on health management and patient safety," was the petitioner's mentor during his studies for his Master of Public Health degree. stated that the petitioner "contributed significantly" to nationwide implementation of the Regarding the petitioner's work at stated:

> He conducted data analysis of quarterly project reports for six years and evaluated the . . . His capstone thesis now has been a great source of reference for students interested in project evaluation, especially in infectious disease. . . .
>
> The two recent research articles which he co-authored are of vital importance and have the strong potential to improve the health of millions of African-Americans. These articles revealed that the deficiency of vitamin D and coronary artery disease are prevalent in HIV-infected African Americans. These studies suggest the evaluation of Vitamin D, in addition to management of traditional coronary-artery-disease (CAD), as potentially important interventions in this high risk patient population. . . .
>
> He is successfully managing several sponsored projects targeted to elucidating the effect of drug abuse in the development of heart disease in the HIV infected American population.

research associate at is the petitioner's supervisor. stated that the petitioner "has been able to make consistent and significant contributions to the success of our research efforts," but did not specify the nature of those contributions except to state that the petitioner "has been responsible for the overall running of several sponsored research programs and a sponsored research project," owing to "[h]is ability to coherently translate his ideas into a rigorous scientific protocol."

praised the petitioner's "outstanding multifaceted professional contributions to the field of tuberculosis, HIV/AIDS and cardiac diseases involving inflammatory process[es] such as coronary heart disease," but provided few details. Instead, provided general descriptions and asserted that the petitioner has excelled in his work. stated that the petitioner's "two recent publications . . . may prove to be a breakthrough in developing new treatment modalities." wording indicates speculation about possible future outcomes, rather than known, existing results.

director of Training and Capacity Building at the praised the petitioner's ability to "apply extremely creative and innovative solutions to address complex organizational problems in the medical setting."

program director at the supervised the petitioner's work on a project where the petitioner "worked on an important area of mining and compiling data on the health status of local residents of East Baltimore." asserted that the petitioner's success in past projects demonstrates his ability to make valuable contributions: "His outstanding track record proves that he can be expected to continue to serve US national interests to a significantly greater extent."

assistant professor at the collaborated with the petitioner "on several research projects" during a two-year research fellowship at stated: "we conducted some cross-sectional researches, which helped me to better understand and elucidate many fact[s] on HIV and heart diseases. . . . The examined patient pools were obtained from the large longitudinal cohorts of patients maintained by [the petitioner] in his parent research group." asserted that the petitioner's role "not only [requires] sound knowledge of medicine and public health . . . but also a leadership acumen and managerial astuteness."

who taught a class that the petitioner attended at the stated: "I believe that [the petitioner] has the ability to become a successful leader within the medical community. He seems dedicated to healthcare and continues to look for opportunities to learn more and expand his knowledge."

vice president of research and planning at Baltimore, stated:

> I met [the petitioner] approximately two years ago when we started the Master in Business Administration (MBA) program in Health Services Management at the . . .
>
> [The petitioner's] public health work with the World Health Organization provides unparalleled preparation in researching the spread of disease and its prevention. . . . Because of his public health experience with populations several times the size of the U.S., he has a broader understanding of disease vectors and its epidemiologic patterns. . . . His deep knowledge in TB, HIV/AIDS and experience in US health

> care uniquely contributes to the understanding of the control and prevention of these infectious diseases individually as well as in conjunction with each other. . . .
>
> Recent improvements in the treatment and management of HIV/AIDS have significantly extended the lives of these patients. Several recent reports suggest that Highly Active Antiretroviral Therapy (HARRT) is associated with a number of clinical and metabolic complications including cardio-vascular diseases (CVD). . . .
>
> [The petitioner] has worked on these issues for many years and his work has helped to reveal the mysteries behind them. Two recent publications, which he has co-authored, have uncovered the strong association of Vitamin D deficiency with coronary artery disease (CAD), especially in HIV/AIDS infected African American population. . . . These findings are of significant value and have the potential to deliver breakthroughs in the management of [several] preventable diseases.

On August 30, 2012, the director issued an RFE, instructing the petitioner to submit documentation to meet the guidelines set forth in *NYSDOT*. Counsel did not directly address the content of the RFE, stating instead that the director must have overlooked the August 11 submission. The bulk of the petitioner's response consisted of copies of materials in that submission, along with copies of various diplomas and training certificates (including the high school diploma of one [redacted] submitted without explanation).

The director denied the petition on November 20, 2012, stating that the petitioner submitted "no corroborative primary evidence" to show "the direct role the beneficiary has played in the field as a whole." The director noted the petitioner's participation in ongoing studies, but stated: "The suggestion that such methods might, possibly at some future date, be beneficial is not sufficient to establish eligibility for a national interest waiver." The director stated that the petitioner has not shown that his research work has attracted significant attention, for example through heavy independent citation by other researchers.

On appeal, the petitioner submits a printout from the Google Scholar database, showing a total of seven citations of three of his articles (one article cited once, another twice, and a third article cited four times). The printout does not identify the citing articles or their authors, and therefore the submission does not show how many of the seven citations are self-citations by the petitioner and/or his co-authors.

On the Form I-290B, Notice of Appeal or Motion, counsel claims that the petitioner "submitted a detailed statement in support of the National Interest Waiver, in which he articulated how he stands apart from his peers." In an accompanying brief, counsel states that, in addition to submitting witness letters, the petitioner "has argued and supported his case through other objective evidence. See his Statement in Support of the National Interest Waiver (Attachment 1), and '*Science in the National Interest*,' which calls for maintaining U.S. leadership across the frontiers of scientific knowledge." A personal statement by the petitioner himself would not constitute "objective evidence." In any event, the record does not contain any such statement by the petitioner, or a copy of *Science in the National Interest*. Counsel's previous exhibit lists did not mention either exhibit.

Counsel does not claim that *Science in the National Interest* discusses the petitioner or his work specifically. Rather, counsel states that it "calls for maintaining U.S. leadership across the frontiers of scientific knowledge." Such a document, even if the petitioner had submitted it, would attest only to the intrinsic merit of scientific research, which is not in question in this proceeding. There exists no blanket waiver for researchers. Rather, as members of the professions holding advanced degrees, such researchers are, by default, subject to the job offer requirement set forth at section 203(b)(2)(A) of the Act.

Counsel contends that "the evidence establishes unequivocally that . . . [the petitioner's] experience and abilities set him apart from other highly qualified biomedical researchers in the field." To support this assertion, counsel quotes from previously submitted witness letters. These quotations make up the bulk of the appellate brief.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* Letters from experts are not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The witness letters, as discussed above, contain some details about the petitioner's past work but leave questions about the nature of the petitioner's future work, and of the work that he will perform once he finishes his graduate studies. That he is studying at a business school for a master's degree in business administration implies that the petitioner intends on pursuing a career in administration rather than as a front-line researcher, and the witnesses have said little about how the petitioner has contributed to the research projects at [redacted] Instead, they have described the projects themselves, and how those projects address important issues. This information is important, but it does not establish that involvement with those projects, in whatever capacity, demonstrates eligibility for the waiver. Regarding the petitioner's earlier work with the [redacted] in India, some witnesses have claimed the petitioner had a national role with the project, whereas others have indicated that his role was local to the state of [redacted]

None of the witness letters showed that the petitioner has had a particularly substantial impact on his field as a whole (which is the standard articulated in *NYSDOT*); they have indicated only that the

petitioner played an integral role in particular projects at [redacted] that have the potential for future benefit.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.